

# Exhibit B

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

VOIP-PAL.COM, INC.

\*

March 5, 2025

VS.

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VERIZON COMMUNICATIONS,  
INC., ET AL.

\*

CIVIL ACTION NO. 6:21-CV-672

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T-MOBILE USA, INC.

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CIVIL ACTION NO. 6:21-CV-674

BEFORE THE HONORABLE ALAN D ALBRIGHT  
MOTIONS HEARING (Via Zoom)

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09:30 1 (Hearing begins.)

09:30 2 DEPUTY CLERK: A civil action in Case  
09:30 3 6:21-CV-672, VoIP-Pal.com, Incorporated, versus Verizon  
09:31 4 Communications, Incorporated, et al. Case called for a  
09:31 5 motions hearing.

09:31 6 THE COURT: Announcements from counsel,  
09:31 7 please.

09:31 8 MR. SIEGMUND: Good morning, Your Honor.  
09:31 9 Mark Siegmund on behalf of plaintiff VoIP-Pal, Inc.  
09:31 10 With me this morning is Lewis Hudnell, Nick Gikkas,  
09:31 11 Stan Thompson, and my partner Will Ellerman. And we  
09:31 12 are ready to proceed.

09:31 13 MS. WOODWORTH: And good morning, Your  
09:31 14 Honor. This is Megan Woodworth of the Venable law firm  
09:31 15 on behalf of the Verizon defendants. With me are my  
09:31 16 partners Frank Cimino and Bill Hector, and I believe  
09:31 17 that Mike Holden, vice president and general counsel of  
09:31 18 Verizon, will be joining us shortly.

09:31 19 THE COURT: And just to make sure I'm  
09:31 20 straight, I chatted with my clerk. You all are in the  
09:31 21 9:30 hearing, correct?

09:31 22 MS. WOODWORTH: That's correct.

09:31 23 THE COURT: Got it. And folks that I'm  
09:31 24 going to take up next are also going to be on this  
09:32 25 call, correct?

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09:32 1 MS. TESSAR: That's correct. This is  
09:32 2 Amanda Tessar from Perkins Coie on behalf of T-Mobile.  
09:32 3 Also on the line is Sarah Kalemeris and John Putnam who  
09:32 4 are T-Mobile in-house lawyers.

09:32 5 And our understanding is that we are  
09:32 6 here -- this is Verizon's hearing, but we are here for  
09:32 7 the beginning part when the merits of the motion will  
09:32 8 be discussed. And then when you get into confidential  
09:32 9 Verizon fee arrangement information, we'll drop off and  
09:32 10 then they won't be on during our hearing when we  
09:32 11 discuss that same type of confidential T-Mobile  
09:32 12 information.

09:32 13 THE COURT: Okay. Very good. I was just  
09:32 14 trying to figure out whether to move straight into you  
09:32 15 all's hearing next after that, but it looks like it  
09:32 16 would be best to keep y'all at 10:30 -- an even 10:30  
09:32 17 start time just so we all know when to be here.

09:32 18 So let's plan on that, but I'm happy to  
09:32 19 take up the motion in the what I'll call the 9:30  
09:33 20 hearing.

09:33 21 MS. KALEMERIS: May I make one  
09:33 22 clarification, Your Honor?

09:33 23 THE COURT: Of course.

24 MS. KALEMERIS: This is Sarah Kalemeris  
09:33 25 for T-Mobile. I'm actually at a mediation with Mike

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09:33 1 Holden for Verizon, and he is in the room with me.

09:33 2 When you get to Verizon's specific things, I will leave  
09:33 3 but it will show my name is still here.

09:33 4 THE COURT: Okay. Thank you for letting  
09:33 5 me know.

09:33 6 MS. TESSAR: Just as kind of a  
09:33 7 housekeeping matter, I'm assuming that you probably  
09:33 8 don't want to hit the merits issues that overlap  
09:33 9 between the two cases twice. And so if there is  
09:33 10 something --

09:33 11 THE COURT: Oh, no. I like doing things  
09:33 12 twice.

09:33 13 MS. TESSAR: Okay.  
09:33 14 (Laughter.)

09:33 15 THE COURT: No, no. I'm kidding. I do  
09:33 16 not want to do them twice.

09:33 17 MS. TESSAR: Perfect. So then I will  
09:33 18 plan to be quiet and let Verizon have the lead. But if  
09:33 19 there's anything on the merits for T-Mobile that we  
09:33 20 need to address, I will pipe in now rather than  
09:33 21 waiting.

09:33 22 THE COURT: That would be great. I'm  
09:33 23 fine with that. Okay.

09:33 24 MR. HUDNELL: And, Your Honor?

09:33 25 THE COURT: Yes, sir, Mr. Hudnell.

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09:33 1 MR. HUDNELL: This is Lewis Hudnell. We  
09:33 2 weren't aware that the client representatives were  
09:34 3 going to be attending today for the defendants. I  
09:34 4 think it's okay because I don't think we're covering  
09:34 5 any VoIP-Pal confidential information. It may come up,  
09:34 6 but I just wanted to flag that in case it does come up  
09:34 7 and that they may need to --

09:34 8 THE COURT: No. If at any time -- this  
09:34 9 is for everyone. If at any time something comes up  
09:34 10 where clients shouldn't be involved, or in this case  
09:34 11 the other defendants shouldn't be involved, whatever,  
09:34 12 you all just let me know and we'll immediately take  
09:34 13 care of that.

09:34 14 So that's -- thank you for letting me  
09:34 15 know that, and I'm grateful for the defense clients  
09:34 16 showing up. I think it's good for them to hear this.  
09:34 17 But if there's anything sensitive to the plaintiff, let  
09:34 18 me know and they'll drop off.

09:34 19 MR. HUDNELL: Thank you, Your Honor.

09:34 20 THE COURT: Sure.

09:34 21 Anything else we need to take up before  
09:34 22 we move to the merits?

09:34 23 Okay. Someone should probably start now.

09:35 24 MS. WOODWORTH: All right. This is on  
09:35 25 behalf of Verizon, and it is our motion for attorneys'

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09:35 1 fees at the 9:30 hearing. So Megan Woodworth again  
09:35 2 from Venable on behalf of the Verizon defendants.

09:35 3 So the issue is attorneys' fees. The  
09:35 4 standard, as the Court is aware, comes from Octane  
09:35 5 Fitness, which asks whether it is an exceptional case.

09:35 6 THE COURT: I don't need the background.

09:35 7 MS. WOODWORTH: Okay. The exceptionality  
09:35 8 is with respect to either the merits of the case or the  
09:35 9 way that it's litigated. And here we have both of  
09:35 10 those in spades as supporting attorneys' fees.

09:35 11 We also have another really important  
09:35 12 Hallmark that comes out of attorneys' fee cases, which  
09:35 13 is the need for deterrence. We'll address each of  
09:35 14 those in order and then move on to the reasonableness  
09:35 15 of the fees that Verizon is seeking.

09:35 16 So with respect to the substantive  
09:35 17 strength of the case, I'm also not going to spend much  
09:36 18 time here. The Court is well aware that it issued a  
09:36 19 summary judgment ruling in which it found VoIP-Pal's  
09:36 20 arguments to try to make an infringement case as being  
09:36 21 without merit in terms of trying to differentiate  
09:36 22 binding Federal Circuit precedent that clearly showed  
09:36 23 that it did not have an infringement claim that it  
09:36 24 could be pressing forward.

09:36 25 As recently as last week, this Court had



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09:36 1 to readdress those arguments when VoIP-Pal moved for  
09:36 2 reconsideration of the summary judgment. The Court  
09:36 3 upheld its ruling and found that VoIP-Pal's arguments  
09:36 4 were the same that it had already made in its brief and  
09:36 5 in its oral argument to the Court.

09:36 6 So that shows that not only does the case  
09:36 7 have low substantive strength, it's not being  
09:36 8 reasonably litigated. VoIP-Pal continues to press its  
09:36 9 arguments which are without merit.

09:36 10 Another big example that we -- or the  
09:37 11 primary example that we focus on in the Verizon brief  
09:37 12 as to the unreasonable manner in which this case is  
09:37 13 litigated relates to damages and the damages demand  
09:37 14 that VoIP-Pal pressed forward throughout the expert  
09:37 15 discovery proceeding.

09:37 16 VoIP-Pal originally hired two experts,  
09:37 17 and it disclosed them both in November 2022. It then  
09:37 18 went forward with only one of those two, Mr. Jacob  
09:37 19 Salk, who was a first time expert. He had no  
09:37 20 experience in valuing IP, no experience in testifying  
09:37 21 in any kind of case, let alone a patent infringement  
09:37 22 case. And that inexperience showed in spades.

09:37 23 He came up with a number for Verizon  
09:37 24 alone that the reasonable royalty in this case was  
09:37 25 5.69 billion, with a B, dollars.

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09:37 1 Now, I know that Your Honor does a huge  
09:38 2 number of patent cases so you probably understand just  
09:38 3 how astounding that number is for damages in this case.  
09:38 4 But for my own perspective, I went and looked up the  
09:38 5 biggest patent damages verdicts in history. And that  
09:38 6 \$5.69 billion is more than double any verdict, any  
09:38 7 reasonable royalty finding that has ever been issued,  
09:38 8 let alone one that's been upheld.

09:38 9 And even those cases, if you look at all  
09:38 10 of the top verdicts, they are cases in which there are  
09:38 11 competitors, there are lost profits, there's things  
09:38 12 beyond reasonable royalty that's at stake and they  
09:38 13 involve blockbuster drugs.

09:38 14 None of that is at issue here. What we  
09:38 15 are talking about is a zero dollar revenue producing  
09:38 16 service that Verizon offers that is defaulted to off on  
09:38 17 every phone that it sells. And \$5.6 billion was the  
09:38 18 number that Mr. Salk offered. And it's no surprise  
09:39 19 that with such a high number that his report and his  
09:39 20 opinions were just riddled with errors.

09:39 21 I don't plan to go through any of those.  
09:39 22 Those were all laid out in our Daubert motion. But I  
09:39 23 also don't think that the Court needs to take those on  
09:39 24 in order to find that this case stands out from the  
09:39 25 others.

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09:39 1 The undisputed facts, the fact that this  
09:39 2 was a first time expert, the fact that he came up with  
09:39 3 a \$5.69 billion number, the fact that throughout the  
09:39 4 expert discovery period he then had to continue to  
09:39 5 correct the mistakes that he made and issue  
09:39 6 supplemental reports, one of which in the Verizon cases  
09:39 7 amounted to a \$200 million decline in the -- or in the  
09:39 8 royalty that he said was appropriate, all of those  
09:39 9 things make this case stand out from others.

09:39 10 But there's even more. After Verizon had  
09:39 11 a fully briefed Daubert motion before the Court, nine  
09:40 12 months after that VoIP-Pal then at that point came in  
09:40 13 and said, wait a second, there are issues here. This  
09:40 14 was right before the final pretrial when Your Honor was  
09:40 15 set to rule on that Daubert motion. And VoIP-Pal said,  
09:40 16 we want to go back to that other expert Mr. Brida that  
09:40 17 we had retained and disclosed back in November 2022.  
09:40 18 We want a new -- a redo on the report. We want a redo  
09:40 19 on our expert. And not only that, but Mr. Brida also  
09:40 20 can't make the upcoming trial so we want a new trial  
09:40 21 date.

09:40 22 All of these are undisputed facts, and  
09:40 23 they're before the Court. And the only good cause that  
09:40 24 VoIP-Pal had for making that request was that Verizon  
09:40 25 had challenged Mr. Salk's opinion. Verizon had

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09:40 1 challenged the substance of his opinions, whether they  
09:40 2 were legally and factually appropriate, whether they  
09:40 3 could survive the 702 standard, and also the fact that  
09:41 4 we had challenged his bias, his credibility and his  
09:41 5 experience.

09:41 6 And when VoIP-Pal comes in with Mr. Brida  
09:41 7 and their request to redo, they say, well, this shows  
09:41 8 that we're being reasonable in litigating the case. It  
09:41 9 shows anything but that. Mr. Brida then came in. He  
09:41 10 did a complete redo of the opinions. VoIP-Pal tried to  
09:41 11 then put forward not one but three new expert reports  
09:41 12 to support a different reasonable royalty. They  
09:41 13 offered one from Mr. Brida, they offered a new one from  
09:41 14 Mr. Minor, and they offered a third one from their  
09:41 15 technical expert, Dr. Oklobdzija.

09:41 16 And the numbers, if you look at -- again,  
09:41 17 these are just undisputed facts that are already before  
09:41 18 the Court -- the number that Mr. Brida came up with in  
09:41 19 the Verizon case dropped the reasonable royalty from  
09:41 20 \$5.5 billion down to \$130 million if you look through  
09:42 21 the expiration date of the patents, but only  
09:42 22 \$63.6 million if you're looking up through trial. That  
09:42 23 shows how unreasonable that \$5.5 billion number was  
09:42 24 that Verizon had to litigate against for a year.

09:42 25 Turning now to the need for deterrence.

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09:42 1 The need for deterrence in this case is particularly  
09:42 2 strong. VoIP-Pal is a serial litigant. This case is  
09:42 3 one of six that VoIP-Pal has filed against Verizon  
09:42 4 alone. Three of those cases have been in this Court,  
09:42 5 and then three have been in other jurisdictions. This  
09:42 6 is one of dozens of cases that VoIP-Pal has filed  
09:42 7 overall. And like many of the cases that we cite in  
09:42 8 our briefs about the need for deterrence, including the  
09:42 9 AdjustaCam and the Blackbird case from the Federal  
09:42 10 Circuit, VoIP-Pal's actions in dismissing many of the  
09:43 11 cases that it's filed for [REDACTED]  
09:43 12 [REDACTED], all of that shows the need for  
09:43 13 deterrence. When VoIP-Pal gets over its skis and finds  
09:43 14 itself in a jurisdiction that it finds to be favorable,  
09:43 15 like the Northern District of California when it had a  
09:43 16 case in particular with Verizon, [REDACTED]  
09:43 17 [REDACTED]  
09:43 18 [REDACTED]

09:43 19 And that's part of the reason that we  
09:43 20 think the need for deterrence from this Court in  
09:43 21 particular is particularly strong. VoIP-Pal's actions  
09:43 22 suggest that they believe that this Court is going to  
09:43 23 hold its frivolous claims to a different standard, that  
09:43 24 this Court is the only one that's going to tolerate the  
09:43 25 infringement claims that VoIP-Pal has put forward.

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09:43 1 This Court needs to send a message to not  
09:43 2 only VoIP-Pal but to other similarly situated litigants  
09:43 3 to say that it will not tolerate such frivolous claims  
09:44 4 and award the attorneys' fees that are requested here.

09:44 5 And turning to those fees, I'm going to  
09:44 6 try to stay high level but I'm obviously prepared to  
09:44 7 answer any questions that Your Honor has about the  
09:44 8 amount of money that Verizon is seeking.

09:44 9 But I think on its face, the numbers of  
09:44 10 the attorneys' fees that Verizon is seeking is  
09:44 11 eminently reasonable. [REDACTED]

09:44 12 [REDACTED], and we'd be prepared to  
09:44 13 supplement that with additional fees since the filing  
09:44 14 of the motion. And so that's, you know, [REDACTED]  
09:44 15 [REDACTED] for a case where Verizon was fighting a  
09:44 16 \$5.5 billion claim.

09:44 17 That's just facially reasonable. And for  
09:44 18 the reasons that we set forth in our declarations, in  
09:44 19 particular, it's reasonable if you compare it to  
09:44 20 similarly situated counsel, if you compare to it AIPLA  
09:45 21 statistics on the amount of money that it takes to  
09:45 22 litigate a case of this nature.

09:45 23 And the final point that I want to make  
09:45 24 on the fees, is the number one point that VoIP-Pal had  
09:45 25 in opposition. Its first argument as to why Verizon's

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09:45 1 fees weren't reasonable was Mr. Deron Dacus, our local  
09:45 2 counsel. VoIP-Pal argues that we simply called him too  
09:45 3 often, we e-mailed him too much, we requested his input  
09:45 4 too often. He spent too many hours responding to  
09:45 5 e-mail, providing strategy, taking telephone calls from  
09:45 6 Verizon counsel and Verizon itself. But those are  
09:45 7 exactly the activities that local counsel should be  
09:45 8 doing.

09:45 9 Yes, we had Mr. Dacus review every filing  
09:45 10 from the time that he stepped into this case until its  
09:45 11 conclusion. We often sought his advice and strategy  
09:45 12 considerations to make sure that we were headed in the  
09:46 13 right direction, both substantively and procedurally,  
09:46 14 for the way that this Court would want to do things.

09:46 15 He added significant value, not just to  
09:46 16 Verizon but to the Court itself. That's exactly what  
09:46 17 this Court should want local counsel to be doing, to be  
09:46 18 taking an active role. And Mr. Dacus was doing exactly  
09:46 19 that. He was prepared to try the case side-by-side  
09:46 20 with the Venable counsel. He was prepared to argue the  
09:46 21 Daubert motion against Mr. Salk, and the request to  
09:46 22 substitute Mr. Salk for Mr. Brida, that we've talked  
09:46 23 about already.

09:46 24 So for that reason, you know, we think  
09:46 25 that that argument, as well as all of the others that

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09:46 1 VoIP-Pal has made about the reasonableness of the fees  
09:46 2 sought are frivolous.

09:46 3 So unless the Court has any further  
09:46 4 questions, I'll reserve the remaining time I have for  
09:46 5 rebuttal.

09:46 6 THE COURT: Response?

09:46 7 MR. HUDNELL: Good morning, Your Honor.

09:47 8 Lewis Hudnell for the plaintiff VoIP-Pal.

09:47 9 I'm going to share my screen here, and  
09:47 10 use some slides. If you give me a second.

09:47 11 Are you able to see my screen, Your  
09:47 12 Honor?

09:47 13 THE COURT: I think I'm about -- yes. I  
09:47 14 can.

09:47 15 MR. HUDNELL: Okay. Great.

09:47 16 Okay. Your Honor, so no surprise,  
09:47 17 VoIP-Pal believes that Verizon's fee motion should be  
09:47 18 denied. And the main reason, Your Honor, we think it  
09:47 19 should be denied is, it's just -- this case is just not  
09:48 20 an exceptional case. If you look at the case law,  
09:48 21 which you've already indicated that you're familiar  
09:48 22 with, exceptional case typically requires some sort of  
09:48 23 clear sign that the plaintiff or the patent owner  
09:48 24 should not move forward with the case. And it's  
09:48 25 usually in the form of an adverse claim construction



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09:48 1 ruling. And we didn't have that here.

09:48 2 The parties did dispute the construction  
09:48 3 of access code request message, as you're familiar  
09:48 4 with, but that didn't occur until summary judgment,  
09:48 5 which you found for the defendants and Verizon. But  
09:48 6 that was at the end of the case, not at the beginning  
09:48 7 of the case.

09:48 8 So there was no clear sign -- there's no  
09:48 9 adverse claim construction at the beginning of the case  
09:48 10 that told us that we shouldn't proceed with this case.  
09:48 11 Verizon never proposed a claim construction of access  
09:48 12 code request message. There was no notice -- Verizon  
09:48 13 talks about the In re Varma case, which Your Honor's  
09:48 14 familiar with and that formed the basis of your summary  
09:49 15 judgment ruling.

09:49 16 But they never alerted us at the  
09:49 17 beginning of the case, or at any point in the case,  
09:49 18 that they thought that In re Varma was binding and  
09:49 19 controlled this case and that we shouldn't proceed.  
09:49 20 Verizon never sent us a notice to say that our presuit  
09:49 21 investigation was inadequate. We received no notice  
09:49 22 from Verizon, as a matter of fact.

09:49 23 And so, Your Honor, when you -- when  
09:49 24 you -- when you look at this, and you look at the theme  
09:49 25 that carries through cases that have been found to be

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09:49 1 exceptional, the facts here just don't line up. And if  
09:49 2 you go ahead and look at the cases that Verizon even  
09:49 3 cited in their brief, starting with the Lumen View  
09:49 4 case, you have a situation here where there was the  
09:49 5 complaint about presuit investigation. That didn't  
09:49 6 happen in this case.

09:49 7           You have a situation where Lumen View  
09:49 8 proposed a claim construction that they couldn't prove  
09:50 9 infringement on. That didn't happen here. Our  
09:50 10 proposed construction of access code request message  
09:50 11 was one that we could prove infringement on.

09:50 12           You have a situation in Lumen View where  
09:50 13 the patent owner sought nuisance value settlements. We  
09:50 14 didn't seek a nuisance value settlement in this case.  
09:50 15 We haven't sought a nuisance value settlement in any  
09:50 16 case. And I'll address -- Ms. Woodworth talked about  
09:50 17 our other cases in the deterrence part of her opening,  
09:50 18 and I'll address that in a second, but we certainly  
09:50 19 disagree that those were [REDACTED].

09:50 20           Again, another theme -- same theme that I  
09:50 21 mentioned before, Your Honor. There's no proceeding  
09:50 22 with the case after an adverse Markman order. Like in  
09:50 23 the AdjustaCam case. We didn't argue a claim  
09:50 24 construction that we couldn't prove infringement on,  
09:50 25 like they did in the AdjustaCam case. There's -- there

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09:51 1 was no allegation here from Verizon that we didn't  
09:51 2 offer evidence to prove any of the limitations of the  
09:51 3 claim, like what happened in the AdjustaCam case.

09:51 4 And as I already mentioned, Your Honor,  
09:51 5 no nuisance value settlements, and I'll talk about that  
09:51 6 a little bit more. And no proceeding by us after an  
09:51 7 adverse Markman ruling.

09:51 8 Now, in the main thrust of her -- of  
09:51 9 Ms. Woodworth's argument today -- I need to scroll  
09:51 10 forward here -- was about Mr. Salk. So let's talk  
09:51 11 about Mr. Salk.

09:51 12 So first, Your Honor, Verizon and  
09:52 13 T-Mobile, they've complained that Mr. Salk was biased  
09:52 14 and that he was a company insider, and that's just not  
09:52 15 the case. Even before these defendants would allow  
09:52 16 Mr. Salk to see their confidential information when we  
09:52 17 retained him, they made him sign a declaration  
09:52 18 attesting to his independence, attesting to his lack of  
09:52 19 involvement with VoIP-Pal and lack of economic interest  
09:52 20 in VoIP-Pal.

09:52 21 And, yes, he had done work for -- before  
09:52 22 for VoIP-Pal, but it's all work in anticipation of  
09:52 23 litigation. Just like any damages expert would do.

09:52 24 And Ms. Woodworth mentioned -- tried to  
09:52 25 attack the magnitude of Mr. Salk's -- well, actually,

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09:52 1 even before we get to that, let me just say, the issues  
09:52 2 with respect to the magnitude of Mr. Salk's expert  
09:53 3 report, the amount of damages we are seeking, his  
09:53 4 methodology, all that was captured in the Daubert  
09:53 5 motion briefing, which was never decided. Those  
09:53 6 motions were denied as moot when the Court granted  
09:53 7 summary judgment.

09:53 8 And the magnitude of his -- his damages  
09:53 9 number wouldn't have changed anything, Your Honor.  
09:53 10 They would have challenged any expert that we had  
09:53 11 presented. In fact, in their reply brief, they  
09:53 12 indicated that they had problems with Mr. Brida's  
09:53 13 number, which is much lower than Mr. Salk's number. So  
09:53 14 that argument really just doesn't hold water, Your  
09:53 15 Honor.

09:53 16 And I want to dispel this notion, Your  
09:53 17 Honor, that you cannot have damages on a service that's  
09:53 18 offered for free. We hear this all the time from the  
09:53 19 defendants. It's simply not true. There's case law  
09:54 20 out there that when you -- and that says even if you  
09:54 21 have a free service, there's still a way to apportion  
09:54 22 the royalty so that you can figure out what percentage  
09:54 23 of the service that is paid for should apply to the  
09:54 24 free service.

09:54 25 We presented those cases to the

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09:54 1 defendants. We've had this dispute throughout the  
09:54 2 case. There's simply no basis to say that just because  
09:54 3 it's free there's no damages in the case.

09:54 4 And, Your Honor, I would encourage you,  
09:54 5 if you're going to consider all the -- the issues that  
09:54 6 Verizon or T-Mobile raise in their Daubert motions  
09:54 7 against Mr. Salk, that you should also read the -- and  
09:54 8 you review the Salk report, you should also review the  
09:55 9 Brida report where we took the affirmative extra to try  
09:55 10 to address the issues that they raised in their Daubert  
09:55 11 motions. And we think that those steps were eminently  
09:55 12 reasonable.

09:55 13 We requested leave in our opposition to  
09:55 14 their Daubert motion to do a redo report to try to  
09:55 15 address these issues. This Court has granted leave on  
09:55 16 at least three occasions for parties to do a redo of  
09:55 17 damages expert reports, specifically in the paSafeShare  
09:55 18 v. Microsoft case, the Paltalk v. Cisco case, the WSOU  
09:55 19 Investments versus Google case. In all those cases,  
09:55 20 the Court has granted redo.

09:55 21 So we thought -- we thought that we were  
09:55 22 trying to get ahead of this issue, rather than wait to  
09:55 23 the final pretrial conference. We thought we'd get  
09:55 24 ahead of this issue, and rather than have wait to hear  
09:55 25 whether the Court was going to grant us leave to

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09:56 1 file -- or sorry -- to serve a new damages expert  
09:56 2 report, we just went ahead and did it. We said, okay,  
09:56 3 fine. They disagree with our expert report from  
09:56 4 Mr. Salk, we're going to bring in a new expert -- not a  
09:56 5 new expert, Mr. Brida had already been disclosed, but  
09:56 6 our other expert, have him prepare a damages report,  
09:56 7 address their issues and try to get this issue decided  
09:56 8 before we got to trial so that we would not delay the  
09:56 9 trial.

09:56 10 If we had waited to the final pretrial  
09:56 11 conference, we would -- there would be uncertainty as  
09:56 12 to whether our damages expert would be in or out and  
09:56 13 there would be the -- more of the potential to delay  
09:56 14 the trial. We were trying to avoid that situation,  
09:56 15 Your Honor.

09:56 16 In addition, I should point out, Your  
09:56 17 Honor, that even if Mr. Salk's report had been struck  
09:56 18 and you had denied -- if you had granted the Daubert  
09:56 19 motion and if you had denied the substitution, we would  
09:57 20 have still been able to put on a damages case through  
09:57 21 factual evidence. That's what the statute requires.

09:57 22 So the issues around Mr. Salk and our  
09:57 23 attempt to implement our contingency plan in case he  
09:57 24 got -- in case his report got struck really don't -- do  
09:57 25 not amount to object -- to an unreasonable manner to

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09:57 1 litigate the case. We were trying to be eminently  
09:57 2 reasonable within the confines of the case.

09:57 3 Now, I was going to move on to  
09:57 4 deterrence, Your Honor. There's no need for deterrence  
09:57 5 here. And I think Ms. Woodworth has overstated the  
09:57 6 number of cases that we have, or at least there's a  
09:57 7 little bit of lack of clarity.

09:57 8 VoIP-Pal has filed four suits against  
09:58 9 Verizon. Now, three of those suits have had companion  
09:58 10 suits either transferred or -- or litigated in a  
09:58 11 different district. Our first suit was filed in  
09:58 12 Nevada, the District of Nevada. Verizon moved to  
09:58 13 transfer that to the Northern District of California.  
09:58 14 That's still the same suit. That's Suit 1.

09:58 15 We filed a second suit in the Western  
09:58 16 District of Texas, and then Verizon turns around and  
09:58 17 files a declaratory judgment action against us in  
09:58 18 Northern California. That's Suit 2. We settled that  
09:58 19 suit with Verizon.

09:58 20 The third suit is this suit that we're  
09:58 21 talking about here today, and Verizon filed a  
09:58 22 declaratory judgment action in the Northern District of  
09:58 23 California to try to change venue of this suit. That's  
09:58 24 the third suit.

09:58 25 And then the fourth suit, Your Honor, we

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09:59 1 actually dismissed, voluntarily, on our own, which was  
09:59 2 filed in this district.

09:59 3 So there's really only been four suits.  
09:59 4 Verizon has sued us twice, and on top of that, Verizon  
09:59 5 has filed an ex parte re-exam against the patents in  
09:59 6 this case. Now, Verizon argues that we've resolved  
09:59 7 other suits in other districts through [REDACTED], but  
09:59 8 that really misstates what took place, Your Honor. In  
09:59 9 all those suits, those parties either received some  
09:59 10 sort of transfer or filed a PTAB proceeding against us.

09:59 11 And so they were trying to move our  
09:59 12 litigation out of the Western District of Texas into  
09:59 13 the Northern District of California, or to the PTAB.

09:59 14 And so those suits were [REDACTED]

10:00 15 [REDACTED]  
10:00 16 [REDACTED]  
10:00 17 [REDACTED]. And they did receive -- and I guess maybe  
10:00 18 I shouldn't go into the details of the agreements. And  
10:00 19 I'll -- actually, I probably don't need to so we can  
10:00 20 keep the -- we can keep the company representatives on.

10:00 21 But the bottom line is, Your Honor, all  
10:00 22 those suits were resolved [REDACTED]  
10:00 23 with the other parties. And we weren't trying to avoid  
10:00 24 the merits of litigating these patents because we  
10:00 25 actually litigated the merits of these patents in this



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10:00 1 district. And we litigated the merits of those patents  
10:00 2 in the Northern District of Texas with another  
10:00 3 defendant who also tried to manipulate our choice of  
10:00 4 venue by moving their case from the Western District to  
10:00 5 the Northern District. In none of these cases did we  
10:01 6 seek nuisance value settlements. We're merely just  
10:01 7 resolving issues attendant to litigation that have had  
10:01 8 been -- where venue had been tried to change elsewhere.

10:01 9 And there's really no need for deterrence  
10:01 10 here, Your Honor, because we've shown restraint. As I  
10:01 11 mentioned, we dismissed our fourth suit against Verizon  
10:01 12 shortly after Your Honor granted summary judgment.  
10:01 13 We're like, hey, you know what? Let's not go forward  
10:01 14 with this suit.

10:01 15 So again, Your Honor, we don't think  
10:01 16 deterrence is a valid consideration for fees here.

10:01 17 Moving on to the reasonableness of  
10:01 18 Verizon's fees, we really just have three issues, Your  
10:02 19 Honor, and I'm actually going to go back to the slides  
10:02 20 for this.

10:02 21 MS. WOODWORTH: And Lewis, I would just  
10:02 22 remind you that if you do get into the details to  
10:02 23 please ask the T-Mobile counsel and team --

10:02 24 MR. HUDNELL: Oh, yes. This is going to  
10:02 25 show that. Yes. So if you want the T-Mobile to --

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10:02 1 team to drop off, this would be the --

10:02 2 MS. TESSAR: Could I suggest just in the  
10:02 3 interest of making this as efficient as possible for  
10:02 4 the Court that maybe we can drop off at the end for you  
10:02 5 guys to address the Verizon's specific fees issues and,  
10:02 6 meanwhile, if I could be heard just quickly on the  
10:02 7 merits before we need to exit.

10:02 8 THE COURT: That's fine with me.

10:02 9 Mr. Hudnell, why don't we do this, why  
10:02 10 don't you finish up everything you need other than what  
10:02 11 you're about to talk about with regard to fees.  
10:02 12 Whenever you're finished, I'll hear from other counsel.  
10:02 13 And then if you need to get into fees, we'll let  
10:02 14 counsel talk and we'll take that up.

10:03 15 MR. HUDNELL: That's fine, Your Honor.

10:03 16 So let me just -- let me just sum up  
10:03 17 then, Your Honor, on the objectively baseless part of  
10:03 18 the case.

10:03 19 This case does not line up with any of  
10:03 20 the themes that have been found in cases to lead to an  
10:03 21 exceptional case finding. Our choice of Mr. Salk and  
10:03 22 the effort that we took to correct his report and  
10:03 23 substitute him for Mr. Brida was not unreasonable.  
10:03 24 There's no need for a deterrence in this -- in this  
10:03 25 case, and therefore we think the motion should be

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10:03 1 denied.

10:03 2 THE COURT: Okay. A response?

10:03 3 MS. TESSAR: You want to hear from  
10:03 4 T-Mobile first or do you want Verizon's response?

10:03 5 THE COURT: Whoever wants to respond just  
10:03 6 on the merits, please.

10:03 7 MS. TESSAR: Yep. I'll go ahead then.

10:03 8 So we agree that everything Verizon said  
10:04 9 is more than sufficient to establish the exceptionality  
10:04 10 of this case. But for T-Mobile we also have a number  
10:04 11 of other issues that even further raise the  
10:04 12 exceptionality situation here and make this stand out.  
10:04 13 And I want to flag those for the Court because we think  
10:04 14 that they are really quite remarkable.

10:04 15 The first is T-Mobile was a real  
10:04 16 innovator in WiFi calling, and they were the first of  
10:04 17 the carriers to launch a WiFi calling system. And they  
10:04 18 did that before any alleged priority date for the  
10:04 19 asserted patents.

10:04 20 We produced a mountain of evidence on  
10:04 21 that. Our product at that time marketed under the name  
10:04 22 "HotSpot@Home." We produced TV commercials. We  
10:04 23 produced New York Times articles. We produced local  
10:04 24 industry recognition. We produced internal technical  
10:04 25 documents. All of that was out there, and at the end

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10:04 1 of the day, VoIP-Pal had no response for why all of  
10:05 2 that prior art system, which operated identically to  
10:05 3 the accused system because the accused system was just  
10:05 4 a new improved version on that, VoIP-Pal had no  
10:05 5 technical response for why that early system was  
10:05 6 different. They were accusing exactly the prior art.

10:05 7 Their position was that all of that  
10:05 8 information that we produced had been planted. They  
10:05 9 had a technical expert offer that opinion. So  
10:05 10 Dr. Oklobdzija came in, and he said that it was fake  
10:05 11 news, that we or someone else had in 2006 planted all  
10:05 12 of this material. And they denied -- that was their  
10:05 13 only rejoinder on that issue in that point.

10:05 14 And we think that that is pretty  
10:05 15 exceptional. VoIP-Pal has argued that the Court can't  
10:05 16 consider that issue or that point because it's not the  
10:06 17 issue that at the end of the day the case was decided  
10:06 18 on. The Supreme Court is clear that that is not the  
10:06 19 case, that we can get our fees for the entirety of the  
10:06 20 work that was done. And there was a lot of work done  
10:06 21 relating to the HotSpot@Home issues. There were  
10:06 22 multiple motions filed by VoIP-Pal on that issue.

10:06 23 And that issue is directly related to  
10:06 24 another issue that was specific to T-Mobile, which was  
10:06 25 the inequitable conduct defense because as the Court

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10:06 1 probably recalls, we unearthed evidence internal to  
10:06 2 VoIP-Pal that VoIP-Pal had known about T-Mobile's WiFi  
10:06 3 calling system, told their patent prosecutor that that  
10:06 4 WiFi calling system was not relevant -- this is before  
10:06 5 they had accused it -- and then internally had  
10:06 6 instructions from the CEO to other employees at  
10:06 7 VoIP-Pal that they should not share information about  
10:07 8 prior art with the patent prosecutor.

10:07 9           So that's the kind of information that  
10:07 10 is -- you know, that kind of evidence, you don't often  
10:07 11 get it. It was so direct. It was so on point. It was  
10:07 12 specific to our product and, you know, we would submit  
10:07 13 that that also is a reason that the case was  
10:07 14 exceptional. It was also an issue that created a lot  
10:07 15 of other work including relating to the privilege  
10:07 16 waiver issues that the Court is familiar with and also  
10:07 17 the opposed motion to amend to add the inequitable  
10:07 18 conduct defense to the case which the Court did  
10:07 19 ultimately grant.

10:07 20           So I will stop there. I don't want to  
10:07 21 belabor it. I just want to make the point that  
10:07 22 T-Mobile does have additional merits issues that we  
10:07 23 really do believe make this case stand out from the  
10:07 24 crowd. Thank you.

10:07 25           THE COURT: And we can go back, and we

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10:07 1 can have a full response, or we can let you all drop  
10:07 2 off and we can hear -- why don't we let you all drop  
10:07 3 off.

10:07 4 MS. TESSAR: We can absolutely drop off  
10:08 5 if everybody's done on merits. I haven't touched any  
10:08 6 of the fees issues yet on this, so we'll get back on.

10:08 7 THE COURT: So we'll -- I'll let  
10:08 8 Mr. Hudnell jump back on the fees, and we should be  
10:08 9 wrapped up by 10:30, I think. And then if you all --  
10:08 10 if T-Mobile would join back on at 10:30, that'd be  
10:08 11 great.

10:08 12 MS. TESSAR: That sounds perfect. We  
10:08 13 will come back then so wait for Mr. Hudnell's response  
10:08 14 at 10:30.

10:08 15 THE COURT: Yes. Thank you.

10:08 16 MS. TESSAR: Outstanding. Have a great  
10:08 17 day, everybody. We'll see you soon.

10:08 18 THE COURT: Thank you.

19 (T-Mobile hearing paused.)

10:08 20 THE COURT: Mr. Hudnell, if you'd like to  
10:08 21 wrap up, and then I'll hear any response we have.

10:08 22 MR. HUDNELL: Thank you, Your Honor. Has  
10:08 23 everyone who's dropped -- dropped off who needed drop  
10:08 24 off?

10:08 25 Okay.

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10:09 1 MS. WOODWORTH: I believe so. Thank you,  
10:09 2 Lewis.

10:09 3 MR. HUDNELL: And, Your Honor, are you  
10:09 4 seeing my screen again?

10:09 5 THE COURT: Yes. I'm good.

10:09 6 MR. HUDNELL: Okay. So I just wanted to  
10:09 7 address a few issues with respect to Verizon's fee  
10:09 8 request. And so the first issue, Your Honor, is  
10:09 9 Verizon did not produce its fee agreement with its  
10:09 10 counsel. And so it's a little bit difficult for us to  
10:09 11 figure out why certain charges were made and then the  
10:09 12 way that they were made.

10:09 13 So for example here, Your Honor, if we  
10:09 14 look at Table 1, and this is the declaration of Frank  
10:09 15 Cimino that was submitted with their report, [REDACTED]

10:10 16 [REDACTED]

10:10 17 [REDACTED]

10:10 18 And if I scroll through here -- and I'm  
10:10 19 not sure why my screen is not scrolling. There we go.  
10:10 20 Verizon's only asking for fees for the after the close  
10:10 21 of fact discovery through the final pretrial conference  
10:10 22 and then I'm assuming fees in connection with this  
10:10 23 motion. But let's put that to the side for a second.

10:10 24 [REDACTED]

10:10 25 [REDACTED], we can take out initial case

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10:10 1 development because Verizon's not seeking that. We can  
10:10 2 take out the trial, [REDACTED]  
10:10 3 [REDACTED]. And that leaves fact and expert  
10:10 4 discovery and summary judgment and pretrial.

10:10 5 So Verizon's -- [REDACTED]  
10:10 6 [REDACTED]  
10:11 7 [REDACTED]. If we subtract off the summary judgment and  
10:11 8 pretrial, which did occur after fact discovery, [REDACTED]  
10:11 9 [REDACTED].

10:11 10 But then the problem becomes, Your Honor,  
10:11 11 because we don't know the specifics of their  
10:11 12 arrangement with -- [REDACTED]  
10:11 13 [REDACTED]  
10:11 14 [REDACTED]  
10:11 15 [REDACTED] [REDACTED]  
10:11 16 [REDACTED]  
10:11 17 [REDACTED]

10:11 18 So what they try to do, Your Honor, in  
10:11 19 Table 3 is at least give some explanation to that. But  
10:11 20 we still think that this table here doesn't answer that  
10:11 21 question.

10:11 22 And so, Your Honor, we had a fact  
10:11 23 discovery close in February of 2023, February 2nd to be  
10:12 24 exact. And then, Your Honor, we had rebuttal expert  
10:12 25 reports, which were served March 28th of 2023. And



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10:12 1 this date is significant, Your Honor, because this is  
10:12 2 the -- this is the date that we assert that they first  
10:12 3 disclosed their single message theory for the access  
10:12 4 code request message issue that determined summary  
10:12 5 judgment. And there's, you know, disputes about that  
10:12 6 and, you know, there's briefing on that about, you  
10:12 7 know, when this was actually disclosed, but our  
10:12 8 position is they didn't disclose it before  
10:12 9 February 28th, 2023. And then expert discovery closes  
10:12 10 on 4/14/23.

10:12 11 So given that the issue that they  
10:12 12 actually resolved this case didn't appear until  
10:13 13 March 28th, 2023, we think these two amounts, Your  
10:13 14 Honor, [REDACTED]

10:13 15 [REDACTED]

10:13 16 Similarly, Your Honor, because we do not  
10:13 17 have insight into how Verizon -- well, let me back up a  
10:13 18 step. Because we don't have insight into how [REDACTED]

10:13 19 [REDACTED]

10:13 20 [REDACTED]

10:13 21 [REDACTED]

10:13 22 [REDACTED]

10:13 23 But the problem, Your Honor, is we --  
10:13 24 there's no way to know, well, [REDACTED]

10:13 25 [REDACTED]

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10:13 1 [REDACTED] There's no support for that in their showing.

10:13 2 And the significant one here, Your Honor,

10:13 3 is occurring in August 2023, [REDACTED]

10:14 4 [REDACTED]

10:14 5 But, again, there's no -- there's no -- [REDACTED]

10:14 6 [REDACTED]

10:14 7 [REDACTED]

10:14 8 [REDACTED] [REDACTED]

10:14 9 [REDACTED]

10:14 10 And this is assuming that you even get to

10:14 11 fees, Your Honor. Obviously, we don't think any fees

10:14 12 are appropriate, but if you did get to fees, [REDACTED]

10:14 13 [REDACTED] And

10:14 14 additionally, as I mentioned before, we think these

10:14 15 fees, before they actually disclosed the theory that

10:14 16 they prevailed on, should be excluded, [REDACTED]

10:14 17 [REDACTED]

10:14 18 And then with respect to Mr. -- Verizon's

10:15 19 local counsel, Mr. Dacus, Your Honor, we went in and

10:15 20 were able to show that of the [REDACTED] hours that he spent

10:15 21 on this case, [REDACTED] of them were spent sending e-mail and

10:15 22 [REDACTED] of them were spent on teleconference calls and

10:15 23 e-mails. And if you calculate that, [REDACTED]

10:15 24 [REDACTED]

10:15 25 [REDACTED], and change, was related

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10:15 1 to e-mails and teleconferences.

10:15 2 And we're not trying to say that, you  
10:15 3 know, Verizon shouldn't have had local counsel and  
10:15 4 shouldn't have relied on local counsel, and we're  
10:15 5 certainly not saying that local counsel is not -- is  
10:15 6 not valuable. But when you consider that their fee  
10:15 7 request -- that this e-mail and telephone expenditure  
10:16 8 of their local counsel is roughly 20 percent of their  
10:16 9 entire fee request, and considering that their local  
10:16 10 counsel did not argue any motions, he didn't take any  
10:16 11 depositions, he didn't appear and argue before the  
10:16 12 Court, we think that this percentage of the fee  
10:16 13 request, it's just excessive.

10:16 14 Not that it's not valuable, it's just we  
10:16 15 think that it's excessive. And we've cited cases where  
10:16 16 Courts have reduced fee requests because of the amount  
10:16 17 of e-mail -- time spent on e-mail and in  
10:16 18 teleconference.

10:16 19 To give you a point of comparison, Your  
10:16 20 Honor, and without revealing any T-Mobile confidential  
10:16 21 information, this number for Mr. Dacus' e-mail and  
10:16 22 teleconference is larger than the number that T-Mobile  
10:17 23 is seeking in their fee request for their local  
10:17 24 counsel, who was involved in the entire case.

10:17 25 As I think Ms. Woodworth mentioned, but

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10:17 1 if she didn't, Mr. Dacus didn't appear in this case  
10:17 2 until after fact discovery closed. And so we think  
10:17 3 it's excessive that after fact discovery closed, [REDACTED]

10:17 4 [REDACTED]

10:17 5 [REDACTED]

10:17 6 So with that, Your Honor, I just  
10:17 7 reiterate that we don't think this case is exceptional  
10:17 8 and that fees shouldn't be awarded, but if you were to  
10:17 9 get to that point, we think that there are problems  
10:17 10 with Verizon's fee request and it should be reduced for  
10:17 11 the reasons that I've stated.

10:17 12 Thank you.

10:17 13 THE COURT: Response?

10:17 14 MS. WOODWORTH: All right. Thank you,  
10:17 15 Your Honor. Megan Woodworth again for Verizon.

10:18 16 And we were just talking about Mr. Dacus,  
10:18 17 so I'll tell you that one piece of advice that he gave  
10:18 18 me was to be as succinct as possible. So I will try to  
10:18 19 do that on rebuttal.

10:18 20 The first point that Mr. Hudnell raised  
10:18 21 was with respect to the cases. And I would urge Your  
10:18 22 Honor, if you haven't read those cases -- I think that  
10:18 23 we are far more exceptional in terms of what's gone on  
10:18 24 in this case than any of those, in particular, the  
10:18 25 AdjustaCam case that Mr. Hudnell raised.

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10:18 1 He said that there, there was issues with  
10:18 2 the presuit investigation, and the quote that he used  
10:18 3 was: The most basic presuit would have shown the  
10:18 4 errors in their infringement case.

10:18 5 The same is true here. The most basic  
10:18 6 presuit investigation, reading In re Varma, would have  
10:18 7 shown VoIP-Pal that it could not go forward on its  
10:18 8 three-message theory.

10:18 9 The other issue that I take, though, with  
10:18 10 the AdjustaCam case is, if -- in the district court  
10:18 11 case there, the district court did not award fees  
10:19 12 because it did exactly what Mr. Hudnell is urging the  
10:19 13 Court to do here, that VoIP-Pal's urging the Court to  
10:19 14 do here, which is to only look at the issues that were  
10:19 15 actually decided. The Federal Circuit said that is not  
10:19 16 how a Court must look at attorneys' fees; it's got to  
10:19 17 look at the totality of the circumstances.

10:19 18 So there, even though the plaintiff had  
10:19 19 voluntarily dismissed its infringement claim right  
10:19 20 before summary judgment, the Court said that it needed  
10:19 21 to go ahead and look at the merits of the infringement  
10:19 22 claim. So following Mr. Hudnell's advice to put the  
10:19 23 Court's head in the sand with respect to Mr. Salk, and  
10:19 24 with respect to the opinions that he issued, would run  
10:19 25 counter to the AdjustaCam case.

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10:19 1 Mr. Hudnell suggested that there are no  
10:19 2 nuisance value settlements. I too will not get into  
10:19 3 the details of those, [REDACTED]  
10:19 4 [REDACTED]  
10:19 5 [REDACTED]  
10:19 6 It shows even more unreasonably the  
10:20 7 lengths that VoIP-Pal was willing to go to to avoid --  
10:20 8 to avoid either venues that it did not want to litigate  
10:20 9 or to avoid the PTAB finding its patents invalid.  
10:20 10 Mr. Hudnell also suggested that this case  
10:20 11 did not involve one where VoIP-Pal was proceeding after  
10:20 12 an adverse claim construction. The entirety of this  
10:20 13 case, though, was based upon a frivolous version of  
10:20 14 Federal Circuit binding precedent. And VoIP-Pal  
10:20 15 absolutely continued to press -- even after this Court  
10:20 16 said that those arguments were without merit, VoIP-Pal  
10:20 17 continued to press exactly the same arguments in its  
10:20 18 request for a reconsideration. That too shows how  
10:20 19 unreasonable this case is.  
10:20 20 With respect to Mr. Brida, again, as I  
10:20 21 anticipated, the argument was that this shows  
10:20 22 reasonableness in trying to have a redo, but even in  
10:20 23 VoIP-Pal's briefs to this Court on attorneys' fees, it  
10:21 24 says that in getting a redo, it would have been  
10:21 25 appropriate had it -- had the Court granted that, it

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10:21 1 would have been appropriate for the Court to award  
10:21 2 fees.

10:21 3 This is on Page 15 of its opposition.  
10:21 4 It's got a number of cases in Footnote 1 where it's  
10:21 5 collecting cases that costs -- that it's appropriate  
10:21 6 for a Court to award costs associated with an expert  
10:21 7 substitution. So the same is true in the context of  
10:21 8 285. It's also appropriate. It's also an appropriate  
10:21 9 fact in the totality of the circumstances for the Court  
10:21 10 to consider that substitution and that request for  
10:21 11 substitution in deciding that fees are appropriate  
10:21 12 here.

10:21 13 With respect to the terms, Mr. Hudnell is  
10:21 14 leaving out two additional cases. There was no  
10:21 15 miscounting. But he's leaving out two additional  
10:21 16 antitrust and class action cases that VoIP-Pal has  
10:21 17 brought more recently in a different jurisdiction. And  
10:21 18 it's noteworthy that those cases were actually served  
10:22 19 the day after this Court issued its request for  
10:22 20 reconsideration.

10:22 21 They've just been sitting in the district  
10:22 22 court of -- of District of Columbia, have not been  
10:22 23 served until this Court issued its request -- issued  
10:22 24 its denial of the request for reconsideration.

10:22 25 Again, this appears to be an attempt by

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10:22 1 VoIP-Pal to keep its petty stock pumped up and to keep  
10:22 2 the pressure on Verizon when its last-ditch effort in  
10:22 3 this venue had fallen.

10:22 4 And then finally, as to the  
10:22 5 reasonableness of the fees that are sought,  
10:22 6 Mr. Hudnell's presentation was about what's included  
10:22 7 versus what's [REDACTED]

10:22 8 [REDACTED]  
10:22 9 [REDACTED] Obviously, that's  
10:22 10 privileged, but it's also not necessary. This is all a  
10:22 11 complete red herring.

10:22 12 The Court looks at what fees are  
10:22 13 appropriate under the lodestar method, which looks at  
10:23 14 what were the number of hours of fees, what were the --  
10:23 15 what were the activities that were required to be  
10:23 16 performed? Are those hours reasonable for the  
10:23 17 activities required, and are the rates reasonable?

10:23 18 Here, there's no argument that they were.  
10:23 19 Even the comparison in Table 3 that's set forth in our  
10:23 20 declaration shows that [REDACTED]

10:23 21 [REDACTED] [REDACTED]  
10:23 22 [REDACTED]  
10:23 23 [REDACTED]  
10:23 24 [REDACTED]  
10:23 25 [REDACTED]



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10:23 1 But if the Court does need detail, I'm  
10:23 2 happy to answer any questions, but it's also all laid  
10:23 3 out. [REDACTED]  
10:23 4 [REDACTED]  
10:23 5 [REDACTED] [REDACTED]  
10:23 6 [REDACTED]  
10:23 7 [REDACTED]  
10:24 8 [REDACTED]  
10:24 9 So all of this is reasonable under the  
10:24 10 lodestar method. And no showing has -- there's been no  
10:24 11 showing made that anything was excessive.  
10:24 12 Thank you, Your Honor, for your time  
10:24 13 today. And unless you have any further questions, that  
10:24 14 completes Verizon's submission.  
10:24 15 THE COURT: Mr. Hudnell?  
10:24 16 MR. HUDNELL: Yes. May I respond to  
10:24 17 that, briefly?  
10:24 18 THE COURT: Please.  
10:24 19 MR. HUDNELL: Thank you.  
10:24 20 So first, I want to be clear, Your Honor,  
10:24 21 Verizon's argument is that -- with respect to the  
10:24 22 objectively baselessness part of the case, their  
10:24 23 argument is that simply because In re Varma existed  
10:24 24 this case should have not gone forward.  
10:24 25 Now, first, they've cited no case that a

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10:24 1 Court's found a case exceptional because there was some  
10:24 2 decision from another court involving another patent  
10:24 3 involving different claims, that that part -- that a  
10:25 4 party ignored and then proceeded with his case. That  
10:25 5 hasn't happened. They had -- there's no authority for  
10:25 6 that, Your Honor.

10:25 7 In re Varma is not binding on this Court.  
10:25 8 Like I said, it deals with a different patent,  
10:25 9 different claims. Yes, the Court used In re Varma to  
10:25 10 grant Verizon's summary judgment, but In re Varma had  
10:25 11 been distinguished by another Court before we even got  
10:25 12 to that point. So it did not control this case.

10:25 13 We had a reasonable argument for our --  
10:25 14 for our interpretation. And Verizon, if you actually  
10:25 15 go back and look at their summary judgment motion, they  
10:25 16 even agree that the argument that we were making was at  
10:25 17 least -- was at least part of the way plausible. And  
10:25 18 what I mean by that is they agree that you could have  
10:25 19 one or more access code request messages as long as  
10:25 20 both -- all the messages had a callee identifier and a  
10:25 21 location identifier.

10:26 22 Our argument was just one -- taking that  
10:26 23 argument one step further. There's nothing  
10:26 24 unreasonable or objectively baseless about it, and it  
10:26 25 certainly wasn't controlled by In re Varma.

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10:26 1 The second thing I wanted to point out,  
10:26 2 Your Honor, has to do with what Ms. Woodworth just said  
10:26 3 about the fees in connection with the substitution  
10:26 4 motion. So first, remember, the Daubert motion was not  
10:26 5 granted. The substitution motion wasn't even addressed  
10:26 6 or decided either.

10:26 7 But what we were trying to say, Your  
10:26 8 Honor, is in connection with that substitution motion,  
10:26 9 if you were going to grant the substitution, we had  
10:26 10 recognized at that point that that may entail  
10:26 11 compensating Verizon for some of the fees associated  
10:26 12 previously with preparing and addressing the Salk  
10:26 13 report.

10:26 14 We were aware that Courts had awarded  
10:27 15 some compensation if they were going to allow the  
10:27 16 substitution, but we weren't making an admission that  
10:27 17 that was a fact that should be taken into account, or  
10:27 18 an admission that, well, now fees should be awarded  
10:27 19 under 285 in this case. That was limited to the  
10:27 20 context of the substitution motion, which had never  
10:27 21 been decided.

10:27 22 Lastly, Your Honor, your -- Ms. Woodworth  
10:27 23 was right to correct me that -- that there are -- in  
10:27 24 terms of deterrence, she was right to correct me that  
10:27 25 there are the antitrust cases which are pending. I was

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10:27 1 really merely focused on the patent cases, and that  
10:27 2 there's been four patent cases with In re Varma -- I'm  
10:27 3 sorry -- with Verizon.

10:27 4 And the reason I was focused on that,  
10:27 5 Your Honor, is because there's been -- there's no  
10:27 6 allegation that our conduct -- there's no -- there's no  
10:27 7 relationship between these cases and the antitrust  
10:28 8 cases in terms of our conduct. There's no evidence  
10:28 9 here that we've been unreasonable in the antitrust  
10:28 10 cases.

10:28 11 I'm not involved in the antitrust cases,  
10:28 12 but I -- but they are very early stage, as  
10:28 13 Ms. Woodworth said, they were literally just served;  
10:28 14 but there's no -- there's no evidence that the conduct  
10:28 15 in those cases had any relationship to the conduct in  
10:28 16 this case -- to these cases and should be used by this  
10:28 17 Court to determine that deterrence is needed and award  
10:28 18 attorneys' fees.

10:28 19 And so for that reason, Your Honor -- for  
10:28 20 all those reasons, Your Honor, we think that Verizon's  
10:28 21 motion should be denied.

10:28 22 THE COURT: From Verizon?

10:28 23 MS. WOODWORTH: Nothing further, Your  
10:28 24 Honor.

10:28 25 THE COURT: Okay. Okay. The Verizon

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10:28 1 lawyers are welcome to drop off. I think we're about  
10:28 2 to get the other folks back on, and we'll get to work  
10:29 3 on an order in the case. And unless there's anything  
10:29 4 else we need to take up for Verizon, I think we're  
10:29 5 good.

10:29 6 MS. WOODWORTH: Yeah. The only other  
10:29 7 thing I would say, Your Honor, is that we did make a  
10:29 8 request to supplement our fee -- the fees requested for  
10:29 9 the time from the filing of the --

10:29 10 THE COURT: You're welcome -- you're  
10:29 11 welcome to have it.

10:29 12 MS. WOODWORTH: Do you want us to  
10:29 13 supplement that now or to wait for Your Honor's ruling?

10:29 14 THE COURT: I would go ahead and  
10:29 15 supplement now so I'll have all the information.

10:29 16 MS. WOODWORTH: Okay. Will do, Your  
10:29 17 Honor. Thank you.

10:29 18 THE COURT: You bet.

10:29 19 MS. WOODWORTH: Have a nice day.

10:29 20 THE COURT: Thank you, ma'am.

10:29 21 (Hearing adjourned.)

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1 UNITED STATES DISTRICT COURT )  
2 WESTERN DISTRICT OF TEXAS )  
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5 I, Kristie M. Davis, Official Court  
6 Reporter for the United States District Court, Western  
7 District of Texas, do certify that the foregoing is a  
8 correct transcript from the record of proceedings in  
9 the above-entitled matter.

10 I certify that the transcript fees and  
11 format comply with those prescribed by the Court and  
12 Judicial Conference of the United States.

13 Certified to by me this 7th day of March  
14 2025.

15  
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